

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF

FROM: DAPHNE HUANG
DEPUTY ATTORNEY GENERAL

DATE: FEBRUARY 19, 2016

SUBJECT: FOR MATTERS IN PROGRESS – PLEADING RECEIVED BY JOHN B. CROCKETT

On February 10, 2016, the Commission received a pleading signed by John B. Crockett on behalf of Rock Creek Hydro, LLC. Mr. Crockett contacted the undersigned attorney who directed Mr. Crockett's attention¹ to Commission Rule 43. That rule requires a partnership or corporation such as Rock Creek Hydro to be represented by a licensed attorney. IDAPA 31.01.01.043.02(b). Mr. Crockett acknowledged that he was not a licensed attorney.

Mr. Crockett asked if he could replace his original pleading – which purported to be filed on behalf of Rock Creek Hydro – with a pleading filed on behalf of himself. As reflected in Mr. Crockett's letter dated February 17, 2016, attached hereto, he was informed that the Commission will consider matters filed by persons representing themselves under Rule 43. *See* IDAPA 31.01.01.043.02(a). On February 17, 2016, Mr. Crockett replaced his initial pleading with a new pleading, styled as "Formal Complaint of John B. Crockett and Request for Declaratory Judgment," with the caption "John B. Crockett, Complainant, Request for Declaratory Ruling." *See* Pleading, attached.

Mr. Crockett's pleading raises some preliminary legal questions, described below.

¹ The undersigned attorney also directed Mr. Crockett's attention to Rule 39.03, which provides that "Persons interested in receiving periodic updates about filings made in certain groups of cases, in individual cases, or the issuance of press releases, orders and notices may subscribe to the Commission's Rich Site Summary (RSS) feed located on the Commission's home page at: www.puc.idaho.gov." IDAPA 31.01.01.039.03.

PRELIMINARY ISSUES

1. Standing

Although the pleading names John B. Crockett as Complainant, there is little indication that the relief sought is actually for Mr. Crockett. Mr. Crockett is identified as “Project Development Manager for Rock Creek Hydro.” Pleading at 2. The “Factual Background” section describes negotiations with PacifiCorp, by Mr. Crockett on behalf of Rock Creek Hydro LLC and Gordon Fulton. Pleading at 6-7. In other words, it seems Mr. Crockett has substituted himself for Rock Creek Hydro as Complainant in name only.

Under Rule 65, the Commission may return or dismiss defective pleadings. IDAPA 31.01.01.065. To the extent Rock Creek Hydro, rather than Mr. Crockett, is in fact the entity seeking relief, the pleading violates Rule 43, requiring a corporation to be represented by a licensed attorney. IDAPA 31.01.01.043.02, .03. As such, the pleading would be defective. Also, if claims for relief are sought for Rock Creek Hydro, Mr. Crockett lacks standing to assert them. *See Coeur d’Alene Tribe v. Denney*, _ Idaho _, 3 (2015), 2015 WL 7421342 (for a matter to be justiciable, the party must have a “particular interest or injury . . . adequate to invoke the protection of judicial decision”). The absence of standing by an alleged complainant will also render a pleading legally defective, and thus subject to return or dismissal under Rule 65.

2. Timeliness of Challenge

The “Factual Background” section of the pleading discusses concerns by Rock Creek Hydro LLC and Gordon Fulton, regarding their negotiations with PacifiCorp. Pleading at 5-7. However, the “Complainant’s Claim for Relief” section is directed almost entirely against the Commission – specifically, as a challenge to Commission Order No. 33425. *Id.* at 7-8 (error in citing Order No. 33435; Pleading at 1 correctly cites Order No. 33425). That Order, entered December 4, 2015, provided:

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order.

Order No. 33425 at 8, *citing Idaho Code* § 61-626. The deadline for Mr. Crockett, or any other interested person, to file a petition to reconsider Order No. 33425 was December 28, 2015. *Idaho Code* § 61-626(2); IDAPA 31.01.01.017.

The Idaho Supreme Court has refused to consider challenges to a Commission Order raised beyond the statutory deadline for a petition for reconsideration. *See Eagle Water Co. v.*

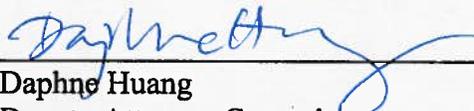
IPUC, 130 Idaho 314, 317 (1997). To the extent Mr. Crockett is challenging the Commission's Order No. 33425, his challenge is untimely.

STAFF RECOMMENDATION

Rule 22 encourages "the use of informal proceedings to settle or determine cases." IDAPA 31.01.01.022. In light of the preliminary issues set forth above, Staff recommends that the Commission treat Mr. Crockett's pleading as an informal complaint and direct Staff to work with Mr. Crockett regarding his filing.

COMMISSION DECISION

Does the Commission wish to treat this pleading as an informal complaint and direct Staff to work with Mr. Crockett regarding the filing?



Daphne Huang
Deputy Attorney General

M:Crockett Complaint_djh

JB Crockett LLC

Consulting

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2016 FEB 17 PM 3:50

IDAHO PUBLIC
UTILITIES COMMISSION

3296 Snowflake
Boise, ID 83706
(208) 871-5527 Cell
(208) 344-5319 Office

February 17, 2016

Commissioners
Idaho Public Utilities Commission
472 W. Washington
Boise, ID 83702

**Re: FORMAL COMPLAINT OF JOHN B. CROCKETT AND REQUEST FOR
DECLARATORY JUDGMENT**

Dear Commissioners:

Enclosed are an original and seven (7) copies of the above referenced documents. This is my second attempt. The filing was initially suggested and encouraged by Rick Sterling of your staff. On submittal I discovered that this is unusual when your staff was not clear on giving it a number. Checking its status I spoke with Daphne Huang of your staff who explained to me that I could not file on behalf of the project owner since I was not an attorney. In a subsequent phone conversation Ms. Huang agreed that you are obligated to consider my filing if I file it as an individual. At a minimum, I would respectfully remind you that you are relied upon to be just and reasonable and inform you that Rocky Mountain Power is extremely difficult to work with on these matters.

Respectfully,


John Crockett

Enclosure

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

RECEIVED
2016 FEB 17 PM 3:50
IDAHO PUBLIC
UTILITIES COMMISSION

John B. Crockett,
Complainant,

Request for Declaratory Ruling

Case No. _____

FORMAL COMPLAINT OF JOHN B.
CROCKETT AND REQUEST FOR
DECLARATORY JUDGMENT

This is a formal complaint filed by John B. Crockett with the Idaho Public Utilities Commission (the "Commission") pursuant to Idaho Administrative Rules 31.01.01.054. John B. Crockett (Crockett) requests the Commission issue a declaratory judgement that Rock Creek Hydro LLC Project ("Project") is sufficiently far enough along the development path that it should be "grandfathered" to the published rates established by the Commission's Order No. 33305 issued May 29, 2015.

On December 4, 2015, the Commission issued Order No. 33425, approving PacifiCorp dba Rocky Mountain Power's (RMP) Application to use summer 2025 as its capacity deficiency period for use in SAR-based avoided cost calculations. On December 15, 2015, the Commission issued Order No. 33435 approving the new avoided cost rates that reflected the new capacity deficiency period. The new rates were effective immediately and were significantly lower than the published rates.

INTRODUCTION

On June 18, 2015, RMP provided Crockett a draft PPA for the Rock Creek Hydro with the avoided cost rates published by the Commission effective June 1, 2015. These avoided cost rates are updated annually as directed by Commission to, among other things, to provide consistency. Based on the draft PPA provided, Rock Creek Hydro made substantial investments

in the interconnection studies and development of the Project to finalize the PPA in an appropriate and timely matter.

On January 8, 2016, Crockett was informed that the interconnection was workable and, on that same day, contacted RMP to finalize the PPA. On January 21, 2016, RMP responded. The RMP response accepted minor changes in the PPA then delivered Crockett the notice that avoided cost rates had been changed.

Crockett requests the Commission issue a declaratory judgement that the Project is sufficiently far enough along the development path that it should be "grandfathered" to the published rates established by the Commission's Order No. 33305 issued May 29, 2015, and contained in the draft PPA provided to Rock Creek Hydro by RMP.

PRELIMINARY MATTERS

Copies of all pleadings and other correspondence in this matter should be served upon:

John B. Crockett
3296 Snowflake
Boise, Idaho 83706
Telephone: (208) 344-5319
Cell: (208) 938-7904
johncrockett@cableone.net

IDENTITY OF PARTIES

1. John B. Crockett (Crockett) is an Idaho citizen, ratepayer and the Project Development Manager for Rock Creek Hydro. Crockett worked for 12 years in the Idaho QF hydropower industry before the Idaho investor owned utilities (IOU's) convinced the Commission in the mid-1990's they had a surplus of power when the Commission essentially ended those projects. A few short years later the Enron scandal occurred and Idaho IOU's were

caught without power and needing to pay a huge price for power. During that period, and for 16 years, Crockett worked for the State Energy Office and was Idaho's expert and representative for renewable energy. This included a period where Crockett had the opportunity to work for Commissioner Kjellander. Crockett continues to work on energy issues and development. Decisions by the Commission directly affect Crockett's life and livelihood.

2. Rock Creek Hydro LLC is an Idaho limited liability company, duly registered to conduct business in the State of Idaho. Rock Creek Hydro LLC's address is Rock Creek Hydro LLC, c/o Gordon Fulton, 5915 Highway 93, Mackay, Idaho 83251. The Rock Creek Hydro Project is a qualifying facility under the Public Utility Regulatory Policies Act of 1978.

2. RMP, a division of PacifiCorp, is authorized to do and is doing business in the state of Idaho with its place of business at 201 South Main, Suite 2300, Salt Lake City, Utah 84111. RMP Company is an electric company and a public utility subject to the jurisdiction and regulation of the Idaho Public Utilities Commission pursuant to I.C. § 61-129. RMP is also subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC").

JURISDICTION

3. This case involves PURPA's avoided cost provisions and FERC implementing regulations thereto, which PURPA directs states to implement. *See* 16 U.S.C. § 824a-3 (a)-(g); *FERC v. Mississippi*, 456 U.S. 742, 751 (1982). In Idaho, the Commission possesses jurisdiction over motions and complaints regarding rates of public utilities, including PURPA rates. I.C. §§ 61-129, -501, -502, -503, -612; *see also Afton Energy Inc. v. RMP Co.*, 111 Idaho 925, 929, 729 P. 2d 400, 404 (1986). The Commission has jurisdiction to issue declaratory judgments regarding utility contracts pursuant Idaho's Declaratory Judgment Act, I.C. § 10-1203. *See Utah*

Power and Light v. Idaho Pub. Utilities Commission, 112 Idaho 10, 12, 730 P.2d 930, 932 (1986).

APPLICABLE LAWS AND REGULATIONS

4. The Commission has jurisdiction over this matter pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission has authority under PURPA and its implementing regulations to set avoided costs, to establish standard published avoided cost rates, to order electric utilities to enter into fixed-term obligations for the purchase of energy from QFs, and to implement FERC regulations. The Commission is also empowered to resolve complaints regarding QFs and utilities and approve QF contracts.

5. PURPA and FERC regulations require that avoided cost rates be just and reasonable to the utility's ratepayers and in the public interest. 18 C.F.R. § 292.304(a)(1). Although FERC promulgated the general scheme and rules, it left the actual implementation of PURPA to the state regulatory authorities. *Rosebud Enterprises, Inc. v. Idaho Public Utilities Commission*, 128 Idaho 609, 614, 917 P.2d 766, 771 (1996). FERC regulations grant the states latitude in implementing the regulation of sales and purchases between QFs and electric utilities. See *Federal Energy Regulatory Commission v. Mississippi*, 456 U.S. 742, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982).

6. In Order No. 32697 the Commission determined that published avoided costs rates are to be updated each year. The Commission further stated that "for the sake of consistency, these annual updates should occur simultaneously with SAR updates". On May 29, 2015, the Commission issued Order No. 33305 approving the annual update to published avoided cost rates for RMP, effective June 1, 2015.

FACTUAL BACKGROUND

7. Rock Creek Hydro LLC is the business entity for Gordon Fulton, a rancher north of Mackay who has long worked to develop a project to produce power as an intermediate step in his existing irrigation system. The Project would consist of a hydropower turbine at the end of an existing 12,275-foot long- 20-inch diameter irrigation pipeline, and sell power to RMP. The capacity of the Project would be about 400 kW.

8. It was clearly the intent of Congress to encourage projects like the Rock Creek Project with the passage of the Hydropower Regulatory Efficiency Act of 2013 and the FERC authorized the Rock Creek Project on February 5, 2015. The U. S. Department of Agriculture also has determined the Project has merit and is in the public interest by the obligation of grant funds with successful completion of the Project. Based on the Commission's own determination the Project also provides power when it is most needed and qualifies for "Seasonal Hydro" rates. The Project would result in economic development in the third largest county in Idaho that only has about 3-percent private land ownership. It would also result in numerous other local and regional beneficial impacts including the production of clean renewable power from a source that is currently being wasted.

9. On May 15, 2015, Crockett formally requested a power purchase agreement (PPA) for the Rock Creek Project. This was followed by a letter provided to the Commission on May 29, 2015, with notification that a PPA had been requested, a description of the Project, concern for good faith efforts with RMP during the PPA and interconnection processes, and a request to the Commission for protection during these processes. The letter to the Commission resulted in discussions with Rick Sterling of the Commission's Staff.

10. During PPA negotiations with RMP it was determined that the proposed point of delivery was not acceptable and needed to be changed. Discussions with Salmon River Electric Cooperative (“SREC”) and the Bonneville Power Administration (“BPA”) ensued and Crockett informed RMP the interconnecting utility would be changed to SREC and the new point of delivery was accepted by RMP.

11. On June 18, 2015, RMP provided Crockett a draft PPA for the Project with the avoided cost rates published by the Commission effective June 1, 2015. These avoided cost rates are updated annually as directed by Commission to, among other things, to provide consistency.

12. On June 11, 2015, Crockett requested interconnection for the Project to SREC. Preliminary investigations conducted by SREC indicated that the Project could connect to its system and its system could wheel the power to RMP, but an engineering study would need to be conducted. On July 29, 2015, Crockett formally requested interconnection to RMP for the Project. SREC commissioned Power Engineers Inc., to conduct an interconnection facility study that was estimated to be completed November 2015. Power Engineers were unable to complete the study when estimated largely because RMP would not provide necessary metering information. On January 14, 2016, SREC wrote Crockett that RMP “were not willing to visit about this project until the necessary paperwork had been provided by Crockett and received by RMP”. On that same day Crockett provided SREC with documentation showing the request to interconnect with RMP on July 29, 2015 and the response from RMP dated August 4, 2015. Crockett also telephoned the RMP Generation Interconnection Project Manager to report this miscommunication.

13. On January 8, 2016, after discussions with SREC and Power Engineers indicated that the interconnection and point of power delivery to RMP was workable, Crockett informed

RMP they were ready to complete the PPA and requested acceptance of minor changes to the draft PPA previously provided. SREC provided the formal Rock Creek Hydro Interconnect Facility Study prepared by Power Engineers, Inc. for SREC, but paid for by Rock Creek Hydro, to Crockett on January 18, 2016.

14. On January 21, 2016, RMP responded to the January 8 Crockett request by accepting the requested changes to the PPA and stating “Please note the updates to Exhibit 5.1 and 5.1(a), in accordance with the tariff change effective 12/14/2015.” This was the first time Crockett was made aware of any potential or actual changes to the published avoided costs. The tariff change referred by RMP was Commission Order No. 33435 issued on December 15, 2015, in the matter of RMP’s application to approve capacity deficiency for avoided cost calculations – and not to change avoided cost rates.

15. Rock Creek Hydro has made substantial investments in interconnection studies and development of the Project, and has made every effort to obtain a PPA in an appropriate and timely matter.

Complainant’s Claim for Relief

16. PURPA and FERC regulations require that avoided cost rates be just and reasonable to the utility’s ratepayers and in the public interest. 18 C.F.R. § 292.304(a)(1). The Rock Creek Hydro Project is in the public interest and the Commission has failed to provide avoided cost rates that are just and reasonable by unpredictably, without notice and significantly lowering the rates while Rock Creek Hydro was performing the acts necessary to comply with the draft PPA and obtain published avoided cost rates. Furthermore, Order No. ~~33435~~³³⁴²⁵ did not follow the Idaho Statutes and it reduced the avoided cost rates for the first eight years of the Rock Creek Hydro Project by over fifty two percent (52%). Idaho Code by requires 30-days of public

notice to change the avoided cost rate (Section 61-307). The Commissions actions have unduly exposed and hindered the Rock Creek Hydro development.

17. The Commission has stated that updates to the avoided costs should be updated annually for consistency (Order No. 32697). But the Commission's actions on this Project consistency is only for the Commission and the utilities they regulate since there is clearly no consistency for PURPA developers. There must be a reasonable amount of certainty that avoided costs will not change significantly and without advanced notice, as they have in this case, during PPA negotiations when Rock Creek Hydro obligated significant expenditures to complete the process.

18. The Commission has failed to allow a reasonable pathway for the Project to receive published avoided costs. FERC's rules require the process to interconnect to the utility to be separate from the PPA and acts necessary to interconnect to the utility are costly. Crockett used a reasonable process to navigate the PPA and interconnection process by doing them concurrently. Rock Creek Hydro made substantial efforts and expenditures to interconnect to RMP immediately after receiving a draft PPA. The draft PPA should have provided some assurance that the PPA would not change within the time necessary to determine if the interconnection is workable.

19. It is not reasonable for the Commission to expect Crockett to know the nuances of the avoided cost calculations, the consequences of every RMP Commission filing, or the significant impact of changing RMP's assumed capacity deficiency period. Upon receiving the PPA request RMP stated and reaffirmed that the Project would be responsible for securing firm transmission and scheduling to their system. Crockett immediately and aggressively worked to secure appropriate interconnection at a substantial cost.

20. Upon receiving the request for a PPA, RMP also provided misinformation. This resulted in a letter to the Commission, dated May 29, 2015, stating Rock Creek Hydro had distrust in the PPA and interconnection process and specifically requesting that the Commission provide Rock Creek Hydro protection against process abuses. This resulted in a telephone call from Commission Staff to Crockett but at no time did Commission Staff mention the Commission would be investigating potential changes in the published avoided cost. Likewise, RMP acted in bad faith by failing to notify Rock Creek Hydro that it was filing requests to the Commission that would result in significantly reduce avoided costs.

21. Completion of the interconnection study was delayed largely due to RMP's lack of cooperation. If RMP would have timely responded to SREC's request for necessary interconnection information, the interconnection facility study would have been completed sooner. Assuming the RMP PPA group timely responded to Crockett to complete the PPA, a PPA could have been submitted to the Commission prior to the December 15, 2015, Order changing the avoided cost rates.

22. Just and reasonable treatment of Rock Creek Hydro by the Commission during PPA negotiations is beneficial to the ratepayers and is in the public interest. Significantly reducing avoided cost rates in the middle of PPA negotiations by inconspicuously changing RMP's deficit year is not just or reasonable.

23. Numerous Commission Orders on PURPA projects have stated they have a long history of encouraging PURPA development (Order No. 32697 et al.). For the Rock Creek Hydro Project the Commission instead shows punitive actions to this PURPA development. The Commission's actions on this Project clearly promote gamesmanship by the utilities they regulate towards PURPA development and disregard the public interest.

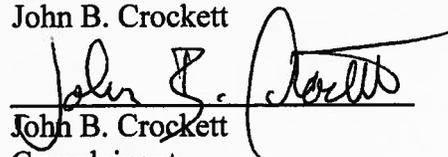
24. Crockett has attempted in good faith to engage in negotiations to obtain a fully executed power purchase agreement to deliver energy and capacity to RMP from the Rock Creek Hydro Project. The Project is sufficiently mature so as to justify "grandfathering" the Project and entitled to the published avoided rates in Order No. 33305 issued May 29, 2015.

PRAYER FOR RELIEF

WHEREFORE, Crockett requests that the Commission issue a declaratory judgement that Rock Creek Hydro Project is sufficiently far enough along the development path that it should be "grandfathered" to the published rates established by the Commission's Order No. 33305 issued May 29, 2015.

Submitted this 17 day of February 2016.

John B. Crockett



John B. Crockett
Complainant